

Award No. 10061
Docket No. TE-8783

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

J. Harvey Daly, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Lehigh Valley Railroad, that:

1. Carrier violated the Agreement between the parties hereto when on July 7, 13, 29 and August 3, 1955, it caused, required and permitted an employe not covered by Telegraphers' Agreement to handle (receive, copy and deliver), train order Nos. 12, 33, 58 and 47, respectively, at Van Etten Junction.

2. Carrier shall compensate senior idle telegrapher, extra in preference on Seneca Seniority District (Buffalo Operating Division), for eight (8) hours at minimum telegrapher (telephoner) rate for such district for each and every day and date such violations have occurred as above set forth.

3. The substantive claim as set forth in Paragraph 1, and the compensatory claim as set forth in Paragraph 2, was filed at the time and in the manner required by the Agreement and custom on this property. The Carrier, acting through its proper officials, failed and refused to give reason for disallowance of such claim at the time and in the manner prescribed in the Agreement and because of such failure, the claim should be allowed as presented.

4. Carrier shall be required to permit joint check of its records to determine violations at Van Etten Junction as above set forth, occurring subsequent to August 3, 1955, and when such violations have been determined, be required to compensate employes entitled thereto as may be revealed by joint check of employe work records.

EMPLOYEES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement between the Lehigh Valley Railroad Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The agreement was effective February 1, 1948, and is by reference made a part hereof, as though set out herein word for word.

This dispute was handled on the property in the usual manner through the highest officer designated by Management to handle such disputes. The claim was declined by such officer and the dispute remains unadjusted. This

Particular attention is directed to Award No. 4259 and Award No. 6959; the rule involved in both of those awards is practically identical with our Rule 32. There is no question that the meaning of the rules in those awards and our rule is identical. The rules in those awards are also confined to points where telegraph or telephone offices are located and where operators are employed, etc. The Carriers' position in those awards reflects practically the same history of the rule involved as in the instant claim.

There is no merit to the contention set forth in Item 3 of the claim. It is admitted by the organization that Supervising Agent J. C. Lilley, in a letter to the General Chairman dated September 6, 1955, stated as follows:

"As stated by you, these train orders were issued to the Operator at Sayre for phoning to the track car operator at Van Etten Jct., and inasmuch as there is no telegrapher or operator employed at this point, there was no violation of the agreement and your claim is therefore denied."

In appealing the Supervisory Agent's decision to the Superintendent, Mr. Baker, the General Chairman agrees that the Superintendent in his reply of September 19th, responded as follows:

"I have checked into this matter and find the information which was given you to be in error as train orders in each instance were given to the operator at Sayre. Therefore, claim is denied."

It can be readily seen that reason was given to the General Chairman denying the claim. Nothing further need be said on this item.

The Carrier respectfully submits that this claim is entirely without merit, and requests the Board to deny this claim.

The facts presented in this submission were made a matter of discussion with the Committee in conference on the property.

OPINION OF BOARD: This case involves the same parties as in Docket No. 8782 and almost the same factual situation. The distinguishing difference is that in this case, train orders were received, copied and repeated while in Docket 8782 track car orders were involved.

This case also presents the same parties and almost the same factual situations as set forth in Awards 8146 and 8540.

At the Board hearing the Carrier contended that this case could not be considered because all claims filed after January 1, 1955, must be made on behalf of employee involved, pursuant to Article V, Section 1 (a) of the Agreement and Memorandum dated August 21, 1954 — which reads as follows:

"All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the occurrence on which the claim or grievance is based. . . ."

The Carrier did not raise the above issue on the property, therefore, it is not properly before the Board and is, accordingly, dismissed.

The Organization raised the issue on the property that no reason for the disallowance of the claim was given by the Carrier as provided in Article V,

Section 1 (a) of the August 21, 1954, Agreement — therefore, this Claim should be sustained or allowed on that basis. The pertinent part of that provision reads as follows:

"Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reason for such disallowance."

The Board is of the opinion that the second paragraph of Mr. J. C. Lilley's letter of September 6, 1955, addressed to Mr. D. J. North, General Chairman of ORT, did give a reason for disallowing Organization's claim. Article V, Section 1 (a) does not spell out or prescribe the manner, means, or words that must be used in giving notice of a disallowance. The Carrier's notice which reads as follows, did comply with the provisions of Article V, Section 1 (a):

"As stated by you, these train orders were issued to the operator at Sayre for phoning to the track car operator at Van Etten Jct. and inasmuch as there is no telegrapher or operator employed at this point, there was no violation of the agreement and your claim is therefore denied."

The question to be resolved in this case is nearly identical with the questions in Awards 8146 and 8540 and Docket 8782 — namely — Did the Carrier violate the Agreement on the dates mentioned in the complaint when it permitted employes not covered by that Agreement to handle train order at points where no telegrapher was assigned.

In deciding the companion case to this one, namely Docket No. TE-8782, the Board stated that the Scope Rule of the Agreement merely lists the positions covered by the Agreement and did not define the job duties. There is no evidence here shown that the work involved has been reserved to the telegraphers' craft or class.

Here again the Board is being called upon to decide a factual situation that has been ruled upon many times in the past. In Award 8540 — Referee Coburn wrote as follows:

"That a Train Order rather than a Track Car Permit form was used in the instant case, and that in Award 8146 the work was done by section foremen and signal maintainers, are not material to our decision here because in each case the Petition asserts an exclusive right to the work involved, whether it be handling track car permits or train orders, and past practice does not support that position."

Referee Coburn's Award (8540) and also Referee Elkouri's Award (8146) are sound and well reasoned awards. The present case failed to produce any evidence that would cause the Board to upset those Awards.

The Board is of the opinion that the Petitioner failed to prove that the work in question has been reserved to the Telegraphers' craft. Accordingly, the Claim is denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement.

AWARD

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of September, 1961.